

**PCLL Conversion Examination**  
**June 2022**  
**Examiner's Comments**  
**Business Associations**

**General comments**

The standard of papers in this sitting of the Business Associations Conversion Examination was average overall.

The questions are designed to test the abilities of the candidates to identify legal issues that practitioners encounter in practice and to apply relevant company law principles to these issues. With this being an open book exam, they are not aimed at testing candidates' ability in reciting the blackletter law.

The majority of the candidates have finished the paper. However, only a small number of candidates exhibited a superior understanding of the law and answered the questions brilliantly. Those candidates who just wrote about general principles without applying them properly to the legal issues did not do well.

The comments on how candidates answered each question are set out below:

**Question 1**

This question tests the candidates' knowledge on (1) the relationship between shareholders and the company and (2) the relationship among the shareholders regarding the Articles of Association. Most candidates managed to identify the relevant issues and analysed accordingly. Apart from referring to the relevant statutory provisions, the better candidates drew analogy to precedents with similar facts to the case at question, adding depth and persuasion to their arguments. Of the four questions in this examination, this question is the probably the one that candidates performed the best.

**Question 2**

This question relates to the authority of company's agents and capacity of company. Candidates generally did not perform well for this question. Most of them failed to display a basic understanding of authority (both actual and apparent) and the relevant statutory provisions. They also struggled with the distinction between authority and capacity of a company. In addition, some candidates confused the issue on authority with director's duties which are mostly irrelevant. This shows a lack of fundamental concept on the internal and external relationships of a company.

**Question 3**

This question centers on unfair preference. Candidates generally performed decently in this question. Most candidates managed to identify the issue of unfair preference, discussed all the required elements of the principle, and applied to the facts reasonably. However, some candidates

failed to discuss some of the elements, particularly the presumption of intention to grant unfair preference to connected person. Another mistake committed by a small number of candidates was their failure to refer to the current law. Credits have also been given to candidates who discussed the invalidity of the floating charges.

#### **Question 4**

Very few candidates attempted this question. These candidates generally showed that they understood the question being related to the agency problem between the majority and minority shareholders, and described some relevant rules under the Hong Kong company law. However, not many of them were able to discuss critically the effectiveness of these rules in tackling and/ or mitigating the said agency problem.